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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1189

MAURICE A. KRISEL, *Petitioner,*

v.

RAFAEL DURAN, SAM VAN HINING, PHILLIPS PETROLEUM COMPANY and ECONOMIC DEVELOPMENT ADMINISTRATION OF PUERTO RICO, *Respondents.*

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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In its Brief in Opposition the Respondent has for the first time sought to distinguish the cases of *Gerr* v. *Emrick,* 283 F.2d 293 (3d Cir. 1960), cert. den., 365 U.S. 817 (1961), and *S. J. Groves & Sons Co.* v. *New Jersey Turnpike Authority,* 268 F. Supp. 568 (D.N.J. 1967), which petitioner has cited as in conflict with the decision below, on the ground that those cases "explicitly hold" that agencies of the State, "if alter egos of the state," are not subject to the diversity jurisdiction of the federal district courts. The "explicit" holding in those cases, however, was that the New Jersey Turnpike Authority *is* subject to suit in the United States District Court under diversity of citizen-

ship, because it should be treated as a citizen of the State of New Jersey not entitled to sovereign immunity. Any statements in those opinions to the effect that a state agency is *not* subject to suit in the United States courts, whether the expression "*alter ego* of the State" is used or not, is *obiter* to the facts actually found in those cases. The Petitioner's argument that the decision below in the instant case conflicts with those decisions rests on the similarities in significant respects between the New Jersey Turnpike Authority and the E.D.A., including the proprietary nature of the functions of both agencies; the ability of both agencies to respond to suits (E.D.A. has access to all the resources of PRIDCO); the broad powers of both agencies to carry on their proprietary functions (E.D.A. derived from PRIDCO the many functions described in Petitioner's statement of facts). To state that the E.D.A. is, and that the Turnpike Authority is not, the "alter ego" of a state does not provide a significant distinction. The two cases cited above amply demonstrate that Respondent errs in proposing that only Congress can extend the diversity jurisdiction of the Federal Courts to embrace an agency like E.D.A. The courts in those cases have already shown that Congress has given them that jurisdiction, and the decision below is in conflict with that holding.

Respectfully submitted,

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